

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHNI SEMMA,

Defendant.

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Crim. Case No. 18-20516

Paul D. Borman

United States District Judge

ORDER GRANTING “GOVERNMENT’S MOTION IN LIMINE TO  
PRECLUDE DEFENDANT FROM ARGUING OR PRESENTING EVIDENCE  
AS TO POSSIBLE ADMINISTRATIVE OR CIVIL REMEDIES INSTEAD OF  
CRIMINAL PROSECUTION

Defendant was indicted on 24 counts of failure to pay over trust fund taxes, in violation of Title 26 U.S.C. §7202, and one count of willful failure to file a federal tax return in violation of 26 U.S.C. §7203.

On March 21, 2019, the Government filed the instant motion. On March 4, 2019, Defendant filed a response.

The Supreme Court held in *Slodov v. United States*, 436 U.S. 238, 244-245 (1978) that, pursuant to 26 U.S.C. §§7202 and 7215, the Internal Revenue Service can seek criminal penalties for willful failure to collect or truthfully account for a

pay over trust-fund taxes, and further that the officers of the employer who willfully fail to do so are personally liable. That the IRS also has alternative civil avenues available to pursue is not a defense to a criminal prosecution, nor is it admissible relevant evidence under Federal Rule of Evidence 401.

*United States v. Stephens*, 148 Fed. Appx 385, 388 (6<sup>th</sup> Cir. 2005), (Judges Cornelia Kennedy, Eric Clay, and Ronald Gilman) held the district court was correct in preventing defense counsel from pursuing “a line of questioning attempting to establish that a tax evader who is not indicted for tax evasion would nonetheless be subject to civil tax assessment proceedings.” The Sixth Circuit cited to its decision in *United States v. Burkhardt*, 501 F.2d 993, 996-997 (6<sup>th</sup> Cir. 1974): “The rule is that ‘the matter of civil liability is not an issue when the jury is determining a defendant’s criminal liability for tax evasion’ [Burkhardt] at 996.” *Stephens* at 390.

The Court further bars Defendant from presenting evidence, discussions, or argument that the history of civil examinations of Mr. Semma and his response to those examinations shows a lack of willfulness to violate the tax code or a lack of purposeful intent to evade his tax obligations.

Accordingly, the Court GRANTS the Government’s motion to preclude the defendant from arguing or presenting evidence as to the availability of various IRS

administrative and civil remedies, or his state of mind during and as to those civil investigations.

SO ORDERED.

DATED: MAY 02 2019

A handwritten signature in black ink, appearing to read "Paul D. Borman", written over a horizontal line.

PAUL D. BORMAN  
UNITED STATES DISTRICT JUDGE